

## **Remarks**

New claims 30 to 46 are added. Claims 30 to 44 are supported by the claims they depend on (see 35 USC §112 rejection). New claim 45 is supported by Figure 5 and its description on page 10 of the application (see also corresponding description on page 9 of the translation of the priority document). New claim 46 is supported in by the Figures, such as by Fig. 1, 3, 12 and 13 and their respective descriptions.

### **Election/ Restriction**

In paragraphs 1 to 3 the Office outlines the restriction of the presently claimed in Claims 1 to 29 into three groups:

Group I, claims 1 to 20, 26 and 27, drawn to container,

Group II, claim 21, drawn to method of producing container(s).

Group II, claims 22 (to 25), 28 and 29 for a method for the treatment of cells.

In paragraph 4, the Office notes undersigned provisional telephone election of Group I, claims 1 to 20, 26 and 27. Undersigned confirms herewith the election, of Group I, claims 1 to 20, 26 and 27 without traverse.

The non-elected claims are withdrawn.

### **Double Patenting**

In paragraphs 6 and 7, the Office provisionally rejected claim 1 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 24 of co-pending appl. No. 10/972,294. The Office also provisionally rejected claim 5 over claim 31 and claim 6 over claim 32 of this application.

Applicants acknowledge these provisional rejections and will address the rejection, if appropriate, in a timely manner in accordance with MPEP §804 I.B(1).

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### **Obviousness**

In paragraphs 8 to 11, the Office rejected claims 1, 5, 6 and 26 under 35 USC§103(a) as being unpatentable over U.S. Patent Publication 2002/0164776 to Beichmann et al. (hereinafter "Beichmann") in view of U.S. Patent 4,765,874 to Modes et al. (hereinafter "Modes").

This application is the U.S. national stage of international application PCT/DE03/00536, filed February 20, 2003, designating the US. A proper cross-reference to this international application was made in the submission of August 20, 2004 and was acknowledged in the filing receipt that issued on December 3, 2004. Thus, the **present application has an U.S. filing date of February 20, 2003**. The present application claims foreign priority to German patent application 102 08 188.3, filed **February 20, 2002**. A proper foreign priority claim was made in the submission of August 20, 2004. The certified priority document was on file with the Office as of that date (see PAIR). Applicants perfect herewith this priority claim by providing a certified translation of the German priority document (attached), which supports the rejected claims.

Support for rejected claim 1 can be found, e.g., in claims 1 and 3 and on page 5 in the paragraph starting on line 5 (see lines 9, 11, 15 and 16) of the translation of the priority document (hereinafter just referred to as the "translation").

Support for the further limitations of rejected claims 5 and 6 can, e.g., be found in claims 6 and 7 of the translation, respectively.

Support for the further limitations of rejected claim 26 can, e.g., be found in the summary, the first paragraph of the disclosure and/or claim 18.

Beichmann has an U.S. filing date of **March 26, 2002** and was published on **November 7, 2002**. Beichmann claims priority to German patent application

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10116211.1, filed March 27, 2001.

**35 USC §102(a) provides:**

the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent (emphasis added)

**35 USC §102(e) provides:**

the invention was described in . . . an application for patent by another filed in the United States before the invention by the applicant for patent (emphasis added)

Thus, Beichmann has a “102(a) date” of November 7, 2002 and a “102(e) date” of March 26, 2002. There is no evidence of a publication prior to February 20, 2002.

Since 35 USC §102(e) does not allow for consideration of foreign priority dates of a reference, applicants submit that Beichmann does not to qualify as prior art under 35 USC §102(e) (see MPEP §2136.03 and In re Himler, 359 F2d 859, 149 USPQ 480 (CCPA 1966) cited therein).

Accordingly, Beichmann does not appear to constitute prior art under 35 USC §102(a) and §102(e) (discussed above) or 35 USC §102(b) and thus also does not constitute prior art under 103(a) against claims 1, 5, 6 and 26.

In paragraph 12, starting on page 8, the Office rejected claim 2 as obvious over Beichmann in view of Modes and further in view of US patent publication 2002/0005352 to Offenbacher et al.

Support for the further limitations of rejected claim 2 can be found, e.g., in claim 2 of the translation.

In paragraph 13, starting on page 9, the Office rejected claim 7, 9, 19 and 27 as obvious over Beichmann in view of Modes and further in view of US patent 5,676,646 to Hoffmann et al.

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Support for the further limitations of rejected claim 7 can, e.g., be found in claim 6 of the translation.

Support for the further limitations of rejected claim 9, can, e.g., be found in claims 8 of the translation.

Support for the further limitations of rejected claim 19, can, e.g., be found in the first paragraph of the translation and in its description of Figure 12, starting on page 17, line 22.

Support for the further limitations of rejected claim 27, can, e.g., be found in claims 6 of the translation.

In paragraph 14, starting on page 11, the Office rejected claim 11 as obvious over Beichmann in view of Modes and further in view of WO99/64157 to Bertling et al.

Support for the further limitations of rejected claim 11, can, e.g., be found in claims 10 of the translation.

In paragraph 15, starting also on page 11, the Office rejected claim 8 as obvious over Beichmann in view of Modes and further in view of the MedProbe internet excerpt attached to the Action.

Support for the further limitations of rejected claim 8, can, e.g., be found in claim 7 of the translation.

In paragraph 16, starting on page 12, the Office rejected claims 14 to 18 as obvious over Beichmann in view of Modes and further in view of US patent publication 2002/0028368 to Saito et al.

Support for the further limitations of rejected claim 14, can, e.g., be found in claim 11 of the translation.

Support for the further limitations of rejected claim 15, can, e.g., be found in claim 12 of the translation.

Support for the further limitations of rejected claim 16, can, e.g., be found in claim 13 of the translation.

Support for the further limitations of rejected claim 17, can, e.g., be found in claim 14 of the translation.

Support for the further limitations of rejected claim 18, can, e.g., be found in claim 15 of the translation.

In paragraph 17, starting on page 17, the Office rejected claim 20 as obvious over Beichmann in view of Modes and further in view of US patent publication 2002/0025573 to Maher et al.

Support for the further limitations of rejected claim 20, can, e.g., be found in claim 16 of the translation.

Thus, applicants submit that Beichmann does not appear to constitute prior art against claim 1, 2, 5 to 9, 11, 14 to 20, 26 and 27. Accordingly, applicants submit that the above obvious rejections of these claims are moot.

Applicants note that claim 10 has not been rejected. Applicants would, however, like to direct the Office's attention to, e.g., claim 9 of the translation for support of the further limitation of this claim.

### **35 USC §112 Rejections**

On pages 18 to 19, paragraphs 18 to 23, the Office rejected claims 3, 4, 12 and 13

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under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter with applicants regard as the invention.

In particular, the Office rejected the use of broad and narrow range limitations in one claims.

In response, applicants have eliminated the narrow range limitations from the claims and introduced new claims 33 to 44 to recite those limitations.

Thus, the basis for all rejections of claim 3, 4, 12 and 13 has been eliminated and these claims should now in condition for allowance (see MPEP §2143.03). New claims 30 to 44 which are dependent on claims 3, 4, 12 and 13 should therefore also be allowable.

On page 19, paragraph 24, the Office objected to claim 6 as not further limiting claim 5. Claim 5 refers to the plastic material of claim 1. The Office noted that the plastic material may be, among others, polypropylene, and/or an intrinsically conductive synthetic material. Claim 6 then specifies the intrinsically conductive synthetic material as being polypropylene.

Claim 5 reads:

“Container according to claim 1, wherein said plastic material is . . . **polypropylene, . . . and/or wherein said plastic material is an intrinsically conductive synthetic material.**”(emphasis added)

Applicants have amended claim 6 to clarify that claim 6 recites alternative materials for the “intrinsically conductive material” of claim 5. Applicants believes that this amendments fully addresses the Office’s concern as claim 6 now clearly further limits claim 5.

Accordingly, applicants submit that the application should now be in condition for allowance.

An early issuance of a notice of allowance is respectfully requested. If there are any outstanding issues, the Office is sincerely urged to call the undersigned at the number provided below.

The extension of time and extra claim fees are submitted herewith. However, the Office is authorized to charge any additional fees required to undersigned's deposit account no. 50-3135.

Respectfully submitted,

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